



In Response

Competition Issues in Telecommunications

Comments of the Business and Industry Advisory Committee (BIAC) to the OECD

May 28, 2001

The Business and Industry Advisory Committee (BIAC) to the OECD, appreciates the opportunity to submit the following comments on issues relating to telecommunications to the Joint Group on Trade and Competition on competition issues in Telecommunications for discussion at the May 28, 2001 OECD WP2 Roundtable on this issue.

Access to the Local loop:

Regulations concerning interconnection should be consistent with the international obligations as set forth in the WTO Reference Paper on Basic Telecommunications Services. Accordingly, interconnection should be provided:

1. under non-discriminatory terms, conditions (including technical standards and specifications) and rates are of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or other affiliates;
2. in a timely fashion, on terms and conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
3. upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

Fixed-to-mobile Relationship:

The principle that should apply to any converging market is that regulation should be kept to a minimum and be limited to establishing full competition, ensuring access to essential facilities, and allocating scarce resources. Traditional forms of regulation should not be automatically applied to new and emerging services.

Access for value-added service providers (VANs) including Internet service providers (ISPs):

The Annex on Telecommunications of the General Agreement on Trade and Services requires WTO members to provide VANs, including reasonable and non-discriminatory access to the public telecommunication network (PTN). BIAC supports increased efforts to monitor and enforce the WTO Telecoms Annex.

One example of unreasonable and discriminatory practices that BIAC members experience that limit competition and impede the growth of data and Internet services is:

1. Discriminatory treatment of VANs and ISPs: This practice occurs when a provider of PTN delays leasing facilities, provides lower standards or service and repair, or provides access to PTN services and facilities under discriminatory terms and conditions to unaffiliated VANs and ISPs vis-à-vis similarly situated affiliated or preferred VANs and ISPs or their retail customers. For example,
 - A provider of PTN may offer interconnection services at flat-rate wholesale prices to its affiliated ISP, which enables that ISP to offer flat-rate retail pricing to its Internet customers. In contrast, the same provider of PTN may offer interconnection services to unaffiliated ISPs only at metered-rate (per minute) wholesale pricing. The unaffiliated ISP then faces the difficult choice of either not offering flat-rate retail prices for its ISP services and losing customers, or offering flat-rate retail prices and bearing the risk that the per minute call origination fees charged by the PTN will exceed the revenue from flat-rate prices charged to Internet customers.
 - A provider of PTN may offer discount calling plans to retail customers who use the services of its affiliated ISPs, but not to customers who use unaffiliated ISPs, or not to customers of unaffiliated ISPs that interconnect to the PTN through competing local carrier. These types of discriminatory retail pricing have a direct negative impact on unaffiliated ISPs. They may also discourage unaffiliated ISPs from using competing local carriers and thus inhibit competition in the market for basic telecommunications infrastructure and service.

2. Denial of access to public telecommunications networks and services: This practice occurs when a provider of PTN delays or refuses to lease facilities to unaffiliated VANs or ISPs, notwithstanding their legal obligations to provide such service. For example,

- A provider of PTN may delay or deny provision of digital trunks, leased lines or other network connections to unaffiliated ISPs or VANs, effectively precluding them from providing valuable services to their customers. At the same time, an ISP or VANs affiliated with the PTN faces no such problems in obtaining digital trunks or leased lines to serve its customers and gain market share.

General Comments

- Several pricing models are used, and one should not be the prescriptive guiding principle.
- All definitions such as “essential facilities” should be consistent with international negotiated policy language.